

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

IN THE MATTER OF the Investigation	)	REGULATORY DIVISION
of the Montana Public Service	)	
Commission into whether Mountain	)	DOCKET NO. D2016.2.15
Water Company's rates are Just and	)	
Reasonable	)	

**CLARK FORK COALITION'S  
POST-HEARING BRIEF**

The Public Service Commission (the “Commission”) opened this docket to investigate whether Mountain Water Company’s (“Mountain Water”) current rates are just and reasonable, given the unauthorized sale of Mountain Water to Liberty Utilities Co. (“Liberty”), a subsidiary of Algonquin Power & Utilities Corporation (“APUC”), a Canadian corporation. The Clark Fork Coalition (the “Coalition”) intervened in this docket primarily to ensure the water resources tapped by Mountain Water to provide drinking water to the people of Missoula are considered in any decision-making and are protected from exploitation by a new owner which has not been vetted by the Commission.

The mission of the Coalition is to protect and restore the Clark Fork watershed. The Missoula aquifer is one of the most precious resources in our watershed. All waters in Montana belong to the state for use by the citizens of Montana. The Montana

Constitution explains that: “[a]ll surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people . . .” (Article IX, section 3(3)). Water rights holders do not own the water itself. Instead, they possess a right to use the water, within state guidelines. § 85- 2-422, MCA. By virtue of its ownership of certain state-based water rights, Mountain Water has the exclusive privilege of using the aquifer to serve Missoula. Algonquin likewise has the privilege of earning a significant return on this public resource. The Commission is tasked with ensuring that Mountain Water customers pay no more for this service than the law allows.

At the hearing in Missoula on May 3 and 4, experts provided competing testimony about the amount of money being made by Algonquin/Liberty from this public resource. At the end of testimony, the experts could not agree on even the most basic financial question after the Mountain Water acquisition by Algonquin/Liberty – the current revenue being generated from Mountain Water’s system and whether rates should be lowered (or raised, according to Mountain Water) to provide no more than the authorized return. Due to the secretive nature of Algonquin/Liberty’s dealings with the Commission, key financial provisions in the sale of Mountain Water are being kept out of the public sphere. The evidence provided in testimony by Dr. John Wilson suggests that an additional \$6 million dollars per year of profit is being generated from the public’s water and shipped to Canadian investors, due to a creative and secretive financing structure. The Coalition’s concern is that any money leaving Missoula to pay foreign

investors is money that is not being invested in the water system to conserve and protect the public's water resources.

It is fundamentally unfair for the public to be kept in the dark about how lucrative our water assets are to a Canadian company. The Coalition urges the Commission to pull back the curtain and inform the people of Missoula just how much money is leaving our community and how it intends to protect Missoula from further transgressions by out-of-state corporate interests.

Respectfully submitted this 16<sup>th</sup> day of May, 2016.

**CLARK FORK COALITION**

By: /s/ Barbara Chillcott

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this, the 16th day of May, 2016, the foregoing CLARK FORK COALITION'S POST HEARING BRIEF was served via U.S. mail and electronic mail on:

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